

REMARKS

Claims 26 and 38 to 40 are presented, with amendments, for reconsideration. Claim 41 has been canceled by this amendment.

The disclosed and claimed invention is directed to a nestable combustible package of the type generally shown in Figure 9. This package has an exterior wall 125 and an interior wall 130, preferably made of cardboard, forming a hollow cone-shaped, combustible package. The package defines an opening in the base of the package and an opening in the top of the package. The opening in the base of the package is relatively larger than the opening in the top of the package, as may be seen in Figure 8, for example. The exterior wall 125 is a substantially cone-shaped exterior surface, and the interior wall 130 is a substantially cone-shaped interior surface. The exterior and interior surfaces are parallel with one another and define a space therebetween them. Loose combustible material 120, such as charcoal briquets, fill the space between the exterior and interior surfaces of the package. With combustible material inside, the outside width 150 of the top of the cone is less than the width 160 of the opening in the base of the package, as shown in Figure 9. This permits the package to be nested with another, identical package with the outside of the top of the cone of one package being inserted into the opening of the base of a second package.

Claims 26, 38, 39, and 41 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,834,661 to Chaplin. This rejection is respectfully traversed for the reason that Chaplin neither shows nor suggests the claimed invention.

In making the rejection, the Examiner has attempted to view the package of Chaplin in an inverted form not intended by Chaplin, but even so has failed to recognize that the Chaplin package is nestable only when empty. Chaplin contemplates that the purchaser of his fuel package must fill the package. When filled, the Chaplin package is no longer nestable. The interior and exterior surfaces of the Chaplin package are not parallel to one another. The claims require that the

surfaces 125 and 130 be parallel to one another and, further, that when the space between these surfaces are filled with combustible material, the package is nestable. Specifically, claim 26 recites “a substantially cone-shaped exterior surface and having a substantially cone-shaped interior surface *parallel with said exterior surface* and defining a space therebetween . . . loose combustible material *filling the space between the exterior and interior surfaces of the package* . . . a cross sectional width of the package *with combustible material inside*, the outside width of the top of the cone is less than the width of the opening in the base of the package, *permitting the package to be nested with another, identical package with the outside of the top of the cone of one package being inserted into the opening of the base of a second package*” (emphasis added). Nothing like this structure is even hinted at Chaplin, even “if one were to flip the package”, as the Examiner suggests.

Claim 40 was rejected under 35 U.S.C. §103(a) as being unpatentable over the patent to Chaplin in view of U.S. Patent No. 4,906,254 to Antosko. This rejection is respectfully traversed. Chaplin has been distinguished above. The Examiner relies on Antosko for a teaching of a handle on a fuel package. The Antosko fuel package, while having a handle, has the form of a milk carton and, therefore, even if the handle of the Antosko fuel package were added to the Chaplin fuel package, the combination would not result in the claimed invention.

Claims 26, 38, 39, and 41 were additionally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,793,320 to Bakic. This rejection is also respectfully traversed.

Bakic discloses a closed pyramidal container 12 comprised of a base member 16 and side walls 18 defining a chamber filled with charcoal fuel particles. This structure is even less relevant than Chaplin, discussed above. The Examiner cites column 2, lines 34–39, of Bakic alleging that “Bakic teaches that the containers may be arranged such that the containers nest.” This is a mischaracterization of what Bakic actually shows and describes. The cited passage is reproduced below:

“The preferred embodiment of the apparatus also contemplates a unique arrangement of a series of containers into the shape of a cube

for storage and shipment. The containers may be placed such that the caps meet and the side walls rest against one another such that six containers may be arranged generally into the shape of a cube."

What Bakic describes is illustrated in Figure 6 in which six of his fuel containers are arranged in the form of cube for shipment. These containers are clearly not nested.

Claim 40 was additionally rejected under 35 U.S.C. §103(a) as being unpatentable over the patent to Bakic in view of U.S. Patent No. 4,906,254 to Antosko. This rejection is also respectfully traversed. Both Bakic and Antosko have been distinguished above.

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 26 and 38 to 40 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope address to: Commissioner For Patents, Washington, D.C. 20231, on June 8, 2006.

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